

Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act

Issued on September 30, 2009

Licensing and Registration Requirements Applicable to Mortgage Loan Originators and Companies Due to Changes in the Law that became Effective on July 1, 2009

1. Background

The 2009 Montana Legislature enacted SB 351, which repealed the 2003 Montana Mortgage Broker and Loan Originator Licensing Act, and the 2007 Montana Residential Mortgage Lender Licensing Act and enacted a new Montana Mortgage Broker, Mortgage Lender, and Mortgage Loan Originator Licensing Act. It became effective on July 1, 2009 (the New Act). The New Act implements the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) passed by Congress in June, 2008.

The Division is issuing this letter to explain the scope of the New Act and how it will affect mortgage lenders, mortgage brokers, and mortgage loan originators currently licensed in Montana as well as new licensees.

2. Who is covered by the New Act?

All mortgage loan originators, mortgage brokers and mortgage lenders.

A. All mortgage loan originators

Mont. Code Ann. § 32-9-103(23) defines a mortgage loan originator as an individual who for compensation or gain or in the expectation of compensation or gain:

- takes a residential mortgage loan application **or**
- offers or negotiates terms of a residential mortgage loan.

“Residential mortgage loan” means a loan primarily for personal, family, or household use secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, or on residential real estate located in Montana. “Dwelling” means a residential structure that contains 1 to 4 units, whether or not the structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if used as a residence. “Residential real estate” means any real property located in the state of Montana upon which is constructed a dwelling or upon which a dwelling is intended to be built within a 2-year period from the date of the settlement of the loan using the loan proceeds.

Mont. Code Ann. § 32-9-102 requires an individual acting as a mortgage loan originator to be registered with the Nationwide Mortgage Licensing System and Registry (NMLS) and licensed through the Montana Division of Banking and Financial Institutions (Division).

The specific facts and circumstances surrounding an individual's activities in connection with a residential mortgage loan will determine whether or not the individual qualifies as a mortgage loan originator under the New Act. The following examples are intended to help the mortgage industry determine the whether an activity will or will not require a license under the New Act. The following list is not intended to be determinative of the activities that do or do not constitute mortgage loan origination, nor is it intended to be a complete list of all origination activities or exclusions.

The following activities, when pursued for compensation or gain, or in the expectation of compensation or gain, will likely constitute mortgage loan origination activities under the New Act:

1. Completing, in whole or part, a residential mortgage loan application, or assisting a borrower in the completion of an application, or assisting the borrower in making an application for a loan. Assisting may include instructing or otherwise directing a borrower in completing any sections of an application form, or providing advice or counsel to a borrower in the lending process, but does not include communication of generic information related to the process, such as the type of information necessary to complete a loan form.
2. Advising or counseling a borrower on loan terms, including amount, payment period, payment amount, interest rates, credit-related fees, financing costs, or options.
3. Recommending, referring, or steering a borrower to a specific lender based upon the borrower's credit history, income, or any other factor specific to the borrower that relates to obtaining a mortgage loan.
4. Obtaining financial information in connection with paragraphs 1, 2, or 3 above, including obtaining a credit report or credit score, from the borrower or a third party to be used by a person in making a credit decision.

The following activities will likely fall outside the definition of a mortgage loan originator under the New Act provided that the person doing the activity is not separately compensated and does not receive gain specific to any of the following activities:

1. Making blank residential mortgage loan application materials available to an applicant.
2. Physically handling completed documents or transmitting documents for, or to, the applicant.
3. Informing the borrower as to whether the lender has approved or denied the borrower's application.

HUD's Interpretive Statements

The Office of Housing and Urban Development (HUD) has issued various interpretations that HUD will likely rely on in determining whether a person's activities in connection with a residential mortgage loan place him or her within the definition of a "mortgage loan originator".¹

HUD has addressed what "taking an application" means:

HUD interprets "tak[ing] an application" to mean receipt of an application for the purpose of deciding whether or not to extend the requested offer of a loan to the borrower, whether the application is received directly or indirectly from the borrower.

HUD has addressed the limits of the clerical or administrative exclusion by stating:

HUD interprets an individual who "takes a residential mortgage loan application" to exclude an individual who performs purely administrative or clerical tasks, such as physically handling a completed application form or transmitting a completed form to a lender on behalf of a prospective borrower. On the other hand, HUD views activity that involves assisting or advising a prospective borrower in the completion of an application extending beyond purely administrative or clerical tasks falls within coverage of the SAFE Act As a result, an individual who offers or negotiates residential mortgage loan terms for compensation or gain could not avoid applicability of the SAFE Act standards by having another person or entity take the application from the prospective borrower and then pass the application to the individual.

Finally HUD states that preparing loan packages qualifies as "assisting a consumer" which would require a license as a mortgage loan originator.

For purposes of this subsection, an individual "assists a consumer in obtaining or applying to obtain a residential mortgage loan" by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

B. All mortgage brokers

Mortgage brokers are entities that that obtain, attempt to obtain, or assist in obtaining a mortgage loan for a borrower from a mortgage lender in return for consideration or in anticipation of consideration. Attempting to or assisting in obtaining a mortgage loan includes referring a borrower to a mortgage lender or mortgage broker, soliciting or offering to solicit a mortgage loan on behalf of a borrower, or negotiating or offering to negotiate the terms or conditions of a mortgage loan with a mortgage lender on behalf of a borrower.

¹The HUD interpretations are available in the Federal Register , Vol. 74, No. 2, and on the HUD website at: www.hud.gov/offices/hsg/ramh/safe/sfea.cfm

C. All mortgage lenders

A mortgage lender is an entity that closes a residential mortgage loan, advances funds, offers to advance funds, or commits to advancing funds for a mortgage loan applicant.

3. Exemptions From the New Act

Some individuals and entities that were exempt under prior Montana law are not exempt under the New Act. Entities that believe they will be exempt under the New Act are required to file an exemption form with the Division in order to be granted the exemption. Please note that a mortgage loan originator working for an exempt entity is not exempt from the licensing requirements of the New Act. Even though the entity is exempt, the individual mortgage loan originator is required to be licensed under the New Act.

A. An Entity that is an agency of federal, state or municipal government.

This exemption applies to agencies of the federal, state, or municipal government. In order to take advantage of this exemption, the entity seeking this exemption must claim the exemption and set forth the factual basis on which it believes it meets this exemption in a form filed with the Division. The Division will grant or reject a request for an exemption. The entities that are granted exemptions and the basis for the exemption will be published on the Division website.

B. Depository Institutions and Subsidiaries Owned and Controlled By a Depository Institution and Regulated By a Federal Banking Agency.

Depository institutions, and subsidiaries owned and controlled by a depository institution and regulated by a federal banking agency, are not required to be licensed by the New Act but will be registered through the NMLS pursuant to regulations that have been proposed by the Federal Financial Institution Examination Council (FFIEC). On June 9, 2009, the federal banking agencies issued a joint notice of proposed rulemaking concerning implementation of the federal registration requirements under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act).² Under the proposed regulations, the depository institution would have to register with NMLS. The registration requirements for depository institutions will **NOT** be enforced by the Division of Banking and Financial Institutions. The federal regulator with authority for the depository institution will enforce the registration requirements. For more information see [NMLS | Federal Registrants](#).

² The notice can be found at Federal Register Vol. 74, No. 109, Tuesday, June 9, 2009. The comment period on the proposed rules runs until August 10, 2009.

C. A Registered Mortgage Loan Originator Working for a Depository Institution or its Subsidiary.

Individuals working for depository institutions, and subsidiaries owned and controlled by a depository institution and regulated by a federal banking agency, are not required to be licensed by the New Act but will be registered through the NMLS pursuant to regulations that have been proposed by the Federal Financial Institution Examination Council (FFIEC). On June 9, 2009, the federal banking agencies issued a joint notice of proposed rulemaking concerning implementation of the federal registration requirements under the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act).³ Under the proposed regulations, individuals working for depository institutions would have to register with NMLS. The registration requirements for employees of depository institutions will **NOT** be enforced by the Division of Banking and Financial Institutions. The federal regulator with authority for the depository institution will enforce the registration requirements for individuals employed by depository institutions. For more information see [NMLS | Federal Registrants](#)

D. An Individual Who Offers or Negotiates a Residential Mortgage Loan with or on behalf of an Immediate Family Member.

HUD has issued an interpretation that notwithstanding the broad definition of "loan originator" in the SAFE Act, there are some limited contexts where offering or negotiating residential mortgage loan terms would not make an individual a loan originator. The provision in the definition that loan originators are individuals who take an "application" implies a formality and commercial context that is wholly absent where an individual offers or negotiates terms of a residential mortgage loan with or on behalf of a member of his or her immediate family.

E. A Person Who Offers, Negotiates, or Provides Financing in Conjunction with the Sale of Real Property Owned by that Person.

A person who offers, negotiates, or provides financing in conjunction with the sale of real property owned by that person and that is secured by a contract for deed, mortgage, deed of trust or other equivalent security interest on the real property sold, as long as the financing is held throughout the term of the contract for deed, mortgage, or trust indenture by the seller.

F. An Entity that Makes a Loan to its Employee if the Proceeds of the Loan are Used to Assist the Employee in Meeting the Employee's Housing Needs.

³ The notice can be found at Federal Register Vol. 74. No. 109, Tuesday, June 9, 2009. The comment period on the proposed rules runs until August 10, 2009.

The entity seeking this exemption must claim the exemption and set forth the factual basis on which it believes it meets this exemption in a form filed with the Division. The Division will grant or reject a request for an exemption. The entities that are granted exemptions and the basis for the exemption will be published on the Division website.

G. An Entity Engaged Solely in Commercial Real Estate.

To the extent that an entity is engaged **solely** in commercial real estate, that entity does not fall within the definitions of the New Act and is not required to be licensed or registered under the New Act.

H. An Entity Qualified as a Pension Plan under 26 U.S.C. § 401 if the Plan Makes Mortgage Loans only to Its Participants.

The entity seeking this exemption must claim the exemption and set forth the factual basis on which it believes it meets this exemption in a form filed with the Division. The Division will grant or reject a request for an exemption. The entities that are granted exemptions and the basis for the exemption will be published on the Division website.

I. The Federal National Mortgage Association, Home Loan Mortgage Corporation and the Government National Mortgage Association.

The entity seeking this exemption must claim the exemption and set forth the factual basis on which it believes it meets this exemption in a form filed with the Division. The Division will grant or reject a request for an exemption. The entities that are granted exemptions and the basis for the exemption will be published on the Division website.

J. A 501(c)(3) Corporation that Makes Mortgage Loans to Promote Home Ownership or Improvements for Bona Fide Low-Income Individuals.

This exemption is available only to an entity which is not otherwise engaged in the mortgage loan business and does not hold itself out to the public as being engaged in the mortgage loan business. The entity seeking this exemption must claim the exemption and set forth the factual basis on which it believes it meets this exemption in a form filed with the Division. The Division will grant or reject a request for an exemption. The entities that are granted exemptions and the basis for the exemption will be published on the Division website.

K. A Person that Performs Only Real Estate Brokerage Activities and is Licensed or Registered Pursuant to Mont. Code Ann. § 37-51-301.

This exemption is available unless the person that performs real estate brokerage activities is compensated by a mortgage lender, mortgage broker or mortgage loan

originator or an agent of the mortgage lender, mortgage broker or mortgage loan originator.

L. A Licensed Attorney Who Negotiates the Terms of a Residential Mortgage Loan as an Ancillary Matter to the Attorney's Representation of the Client.

This exemption is available to a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client unless the attorney is compensated by a mortgage lender, mortgage broker or mortgage loan originator or an agent of the mortgage lender, mortgage broker or mortgage loan originator.

M. A Licensed CPA or Public Accountant Who Negotiates the Terms of a Residential Mortgage Loan as an Ancillary Matter to the Provision of Public Accounting Services to the Client.

This exemption is available to a licensed CPA or public accountant who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the provision of public accounting services to the client unless the CPA or public accountant is compensated by a mortgage lender, mortgage broker or mortgage loan originator or an agent of the mortgage lender, mortgage broker or mortgage loan originator.

4. Licensing Requirements Under the New Act By Category

As part of the New Act, all individuals and entities will be eventually be required to register with the NMLS and become licensed by the Montana Division of Banking and Financial Institutions. However, the timeframe for registration and licensure will vary by type of license and date of licensure.

A. Mortgage Loan Originators Whose Montana License Expires June 30, 2010

Individuals whose current license expires on June 30, 2010 will have until May 31, 2010 to satisfy all the requirements for licensure under the New Act and have a complete record in NMLS and submit it to the Division for approval by June 30, 2010.

Individuals who hold less than 20 hours of Montana approved continuing education credits are strongly encouraged to take additional Montana approved credit hours to ensure that they hold 20 hours of continuing education credits approved by the Division by November 1, 2009. Existing licensees are eligible to have the Division certify that they have met the 20 hours of prelicensure education required by the New Act.

HOWEVER, NO PARTIAL CERTIFICATIONS CAN BE MADE TO THE NMLS. ANY INDIVIDUAL WHO HOLDS FEWER THAN 20 HOURS OF MONTANA APPROVED CONTINUING EDUCATION CREDITS MAY NOT BE CERTIFIED

AS HAVING MET THE PRELICENSE EDUCATION REQUIREMENTS.

Therefore, the Division encourages all existing licensees to check to ensure they have completed at least 20 hours of Montana approved continuing education credits. The credit hours must be in the following areas:

- a. 3 hours of Federal law and regulations;
- b. 3 hours of ethics, this shall include instruction on fraud, consumer protection, and fair lending issues;
- c. 2 hours of training related to lending standards for the nontraditional mortgage product marketplace; and
- d. 12 hours of undefined instruction on mortgage origination. If any additional credits are needed to reach 20 hours, those credits must be taken by November 1, 2009.

For more information see [Division of Banking and Financial Institutions](#)

B. Mortgage Loan Originators Licensed on or after July 1, 2009

Mortgage loan originators licensed after July 1, 2009 will be issued a temporary license which will expire on April 1, 2010 or when the individual becomes licensed through NMLS whichever is earlier. All requirements for obtaining a fully-approved non-temporary license must be completed by March 1, 2010 and submitted to Montana for approval by April 1, 2010. [Letter Montana MLO transition.doc](#).

C. Mortgage Loan Originators of Exempt Non-Depository Institutions

Individuals who engage in mortgage loan originator activities in Montana on behalf of exempt non-depository institutions must meet all the requirements for licensure under the New Act and have a complete record in NMLS by March 1, 2010 and submit it to the Division for approval by April 1, 2010. [Letter Montana MLO transition.doc](#).

D. Mortgage Loan Originators of Non-Depository Institutions That Were Formerly Exempt Under Montana Law

Under Montana's two old laws, some individuals engaged in mortgage loan origination activities in Montana for non-depository institutions were exempt from mortgage loan originator licensing requirements due to the institution's relationship with a depository institution. That exemption is no longer available under the New Act, effective July 1, 2009. As a result, all individuals who engage in mortgage loan origination activities in Montana on behalf of non-depository institutions who formerly qualified for an exemption must obtain a temporary mortgage loan originator license from the Division of Banking and Financial Institutions by July 1, 2009. This requirement arises from the repeal of the two old laws in Montana and enactment of the New Act which requires that all mortgage loan originators engaging in mortgage loan origination activities in Montana be licensed by the Division. By March 1, 2010, all mortgage loan originators falling

within this category must satisfy all the requirements for licensure under the New Act and have a complete record in NMLS and submit it to the Division for approval by April 1, 2010. [Letter Montana MLO transition.doc](#).

E. Non-Depository Institutions That Were Formerly Exempt Under Montana Law

Under Montana's two old laws, some non-depository institutions were exempt from mortgage lender licensing requirements due to the institution's relationship with a depository institution. That exemption is no longer available under the New Act, effective July 1, 2009. As a result, all non-depository institutions who formerly qualified for an exemption must obtain a temporary mortgage lender license from the Division of Banking and Financial Institutions by July 1, 2009. This requirement arises from the repeal of the two old laws in Montana and enactment of the New Act which requires that all mortgage lenders engaging in mortgage loan origination activities in Montana be licensed by the Division. The temporary license will expire on April 1, 2010 or when the entity becomes licensed through NMLS whichever is earlier. [Montana Letter to Company Licensees](#).

5. Other Activities Covered Under the New Act

A. Independent Contractor Mortgage Loan Processors and Underwriters

After July 1, 2009, individuals who engage in mortgage loan processing or underwriting activities as an independent contractor may not engage in such activities until licensed as a mortgage loan originator through the Division. Independent contractor mortgage loan processors and underwriters will be issued a temporary license which will expire on April 1, 2010 or when the individual becomes licensed through NMLS whichever is earlier. All requirements for obtaining a fully-approved non-temporary license through NMLS must be completed by March 1, 2010.

B. Mortgage Loan Originator Employment Exclusivity Requirement

Mortgage loan originators may not be simultaneously employed by more than one entity. The entity may be a mortgage lender or a mortgage broker or exempt from licensing requirements. But the individual may only be employed by one entity. Likewise, the mortgage loan originator may not enter into a contractual relationship for delivery of mortgage loan origination services to more than one entity.

C. Mortgage Loan Modification Activities

As of July 1, 2009, entities that offer to perform, or engage in, mortgage loan modification activities in Montana on behalf of borrowers for compensation or gain or in the expectation of compensation or gain, must be licensed as a mortgage broker or

mortgage lender through the Division. All individuals who engage in mortgage loan modification activities in Montana on behalf of a licensed mortgage lender or mortgage broker must be licensed as a mortgage loan originator by the Division. The Division encourages all such individuals to initiate the process for an approved temporary license immediately to minimize or prevent business disruption. All requirements for obtaining a license through NMLS must be completed by March 1, 2010 and submitted to the Division for approval.

D. Retail Sellers of Mobile Homes, Manufactured Homes and Recreational Vehicles

Retail sellers of mobile homes, manufactured homes, and recreational vehicles are required to be licensed under the New Act. In the commentary to the Model State Law⁴, HUD has stated:

The SAFE Act's definition of "residential mortgage loan" includes a loan secured by a consensual security interest on a "dwelling" and cross-references the definition of dwelling in section 103(v) of the Truth in Lending Act. (TILA) (15 U.S.C. 1601 note).

Regulation Z, which implements TILA, defines dwelling to mean "a residential structure that contains 1 to 4 units, whether or not that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence." (12 CFR 226.2(a)(19).) Since both the SAFE Act and TILA address consumer protections for borrowers in housing finance transactions, HUD finds that the same interpretation applies under the SAFE Act. In addition, HUD interprets "mobile home" to include a manufactured home, as defined in the National Manufactured Housing Construction and Safety Standards Act of 1974. (42 U.S.C. 5402(6).)

E. Servicer Loss Mitigation Specialists

The New Act allows Montana to adopt a rule exempting servicer loss mitigation specialists if HUD determines an exemption does not violate the SAFE Act. HUD has published a Question and Answer document on its website that states:

QUESTION: Do the licensing requirements of the SAFE Act apply to individuals who perform loan modifications for loan servicers that modify existing loans?

⁴ See <http://www.hud.gov/offices/hsg/ramh/safe/cmsl.cfm>

ANSWER: HUD recognizes that servicers are increasingly taking applications for and negotiating the terms of loan modifications that substantially alter the terms of existing mortgage loans. These types of loan servicing activities are often very different from what industry and the public viewed as typical loan servicing activities only a few years ago. Today's loan modifications may include an increase or decrease in the interest rate, a change to the type of interest rate (e.g. fixed rate versus adjustable rate), an extension of the loan term, an increase or a write-down of the principal, the addition of collateral, changes to provisions for prepayment penalties and balloon payments, and even a change in the parties to the loan through assumption or the addition of a cosigner. The activities of a loan servicer that result in modification of the terms of a residential mortgage loan can be virtually indistinguishable from the performance of a refinancing, which is unambiguously covered by the SAFE Act⁵.

HUD understands the initial uncertainty about whether loan servicers are covered by the SAFE Act. Loan servicers involved in traditional loan servicing activities are likely not covered by the SAFE Act, but today, given the housing crisis, loan servicers are engaged in modification activities beyond those that they traditionally performed. Accordingly, HUD is inclined to clarify through rulemaking that at least some individuals who engage in loan modification activities are subject to the requirements of the SAFE Act. Any final decision to make this clarification will be addressed in the rulemaking. Because the definition of "loan originator" in the SAFE Act supports coverage of loan servicers engaged in loan modification activities, a state that has enacted legislation that follows the SAFE Act's definition of a "loan originator" will have provided for the possibility of covering these individuals. Accordingly, if HUD adopts a final rule requiring coverage of such individuals, a state would be able to clarify that its legislation provides such coverage through administrative means.

6. Voluntary Registrations Under the New Act

Exempt mortgage company entities may chose to voluntary register through the NMLS in order to manage their mortgage loan originator licensing and in order to provide a surety bond for their mortgage loan originators. If exempt mortgage company entities chose to register with NMLS, they can find more information at [NMLS | MT Transition Plan](#). This registration is voluntary. No state fees are charged for this registration. Only NMLS system fees are charged.

In order to voluntarily register through NMLS, an entity must have an exemption granted by the Montana Division of Banking and Financial Institutions.

⁵ See the HUD website at www.hud.gov/offices/hsg/ramh/safe/sfea.cfm under frequently asked questions and answers.

7. Continuing Education.

Montana requires 12 hours of continuing education per year. All continuing education must be taken through NMLS. The continuing education must in the following areas:

- 3 hours of Federal law and regulations;
- 2 hours of ethics that shall include instruction on fraud, consumer protection, and fair lending issues;
- 2 hours of training related to lending standards for the nontraditional mortgage product market; and
- 5 hour of undefined instruction on mortgage origination.

8. Fees

Montana fees are:

Mortgage broker	\$500
Mortgage broker branch	\$250
Mortgage lender	\$750
Mortgage lender branch	\$250
Mortgage loan originator	\$400

Montana charges one-half the fee for any license period of less than six months.

NMLS fees are:

Mortgage company	\$100
Branch	\$20
Individual	\$30